THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, 28th day of February,2007

W.P.No.8400 of 1997

Between:-

Superintending Engineer,
PJP Circle I, Gadwal
and others … Petitioners

and

Mohd. Pasha & another … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.8400 of 1997

ORAL ORDER:

This Writ Petition is filed challenging the Award dated 19-12-1996 passed in I.D.No.180 of 1994 on the file of Labour Court III, Hyderabad.

It appears, when the services of the 1st respondent-workman were terminated, he raised a dispute under Section 2-A(2) of the Industrial Disputes Act,1947 (for short 'the Act') before the Labour Court. It was the case of the workman that he was appointed as NMR on 13-10-1982 and his services were discontinued with effect from 26-6-1986 on account of filing of a criminal case against him. However, on his acquittal in the criminal case, he was reinstated into service with effect from 17-10-1988 and worked continuously upto 4-3-1992, on which date he fell ill. He was under treatment till 15-8-1992. When he reported for duty along with medical certificate on 16-8-1992, he was not taken on duty. Therefore, he filed the claim petition. A counter affidavit is filed by the Management-writ petitioners asserting that the workman absconded from duty from 4-3-1992 on account of a quarrel with staff members. The workman submitted leave application along with medical certificate for the period from 5-3-1992 to 15-8-1992, but he has not submitted any medical certificate for the period from 16-8-1992 to 22-10-1992. The NMR worker is not eligible for any kind of leave. Before the Labour Court, on his behalf, the workman examined himself as W.W.1 and got marked Exs.W1 to W8. On behalf

of the Management, no oral or documentary evidence was let in. After a detailed consideration of the entire evidence on record, the Labour Court came to the conclusion that the workman had put in more than 240 days of service preceding the date of his termination i.e. 16-8-1992 and as such, the punishment of termination of the services of the workman was disproportionate to that of the misconduct alleged; therefore directed fresh appointment of the 1st respondent herein, but denied the back wages and continuity of service, since he had absented from duty between 4-3-1992 and 15-8-1992. Aggrieved by the same, the Management filed the present Writ Petition.

Learned Government Pleader appearing for the petitioners strenuously contended that the 1st respondent-workman was only an NMR working on casual basis and the Irrigation Department is not an 'industry' within the meaning of Section 2(j) of the Act; therefore, the Award of the Labour Court is illegal and is liable to be set aside.

Heard the learned counsel for the 1st respondent-workman, who supported the impugned Award.

There is no necessity of going into all the details. The law is well settled that even the persons employed by the Irrigation Department, who are not governed by the Rules made under Article 309 of the Constitution of India, are all workmen and the Irrigation Department is an 'industry' within the meaning of Section 2(j) of the Act in view of the decision in **BANGALORE WATER SUPPLY AND SEWERAGE BOARD v. A.RAJAPPA**[1]**.** Insofar as putting in service of 240 days preceding the date of his termination by the 1st respondent is concerned, there is no dispute. Under those circumstances, I am of the opinion that no ground is made out to call for interference of this Court under Article 226 of the Constitution of India. The Writ Petition is

devoid of merits and is liable to be dismissed.

Accordingly, the Writ Petition is dismissed; but, in the circumstances, there shall be no order as to costs.

28-2-2007

prk

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[1] AIR 1978 SC 548